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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,881	12/22/2000	Norman G. Anderson	2316-143	5632

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EXAMINER
PADMANABHAN, KARTIC

ART UNIT	PAPER NUMBER
1641	

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/741,881

Applicant(s)

ANDERSON, NORMAN G.

Examiner

Kartic Padmanabhan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period of Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 11-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Specification***

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
3. The use of the trademarks Teflon and Iodixanol have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informalities: the last paragraph of page 19 refers to US Patent 5,580,717 twice in the same sentence.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 recites the limitations "the presence" and "the sedimentation path". There is insufficient antecedent basis for these limitations in the claim. In addition, the recitation of the term "capable" renders the claim vague and indefinite because it is unclear if the binding agent actually binds the particle or merely can bind the particle.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

9. Claims 1-6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Stocker (US Pat. 4,560,647). The reference discloses a method for the determination of antigens or antibodies in a fluid sample by incubation of particles, which have antigens of the surface, and antibodies. The antigen/antibody complex is introduced into a container having a conical shaped bottom, wherein the bottom of this container is coated with an immunoglobulin component directed against the antibodies. The determination of sediment (after centrifugation) is an indication of

the amount of analyte present (Col. 2, lines 10-23). In addition, the antigen/antibody complex is freed from unbound immunoglobulin. This may be done by centrifuging the fluids containing the complex through a cushion containing a further liquid, wherein the density of the cushion is greater than that of the other fluid. It is therefore inherent that some sort of density gradient is created during this step. The method of the reference is especially suitable for the determination of viral antigens or viral antibodies (Col. 2, lines 29-32). The container of the reference may be a cuvette (Col. 2, lines 56-59). Since the bottom of the container is coated with binding agent, it is inherent that there are plural binding agents and that these binding agents are on different parts of the solid phase, as one binding agent cannot cover the entire bottom surface of the container.

10. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Anderson et al. (US Pat. 6,254,834). The reference discloses methods for the detection and characterization of microorganisms using sedimentation rate and binding density. The method comprises ultracentrifugation of a sample containing the microorganisms in an ultracentrifuge tube. This ultracentrifugation step may include the formation of density gradients and/or the staining of the microorganisms using fluorescent dyes (Col. 5, lines 1-19). The centrifuge tube of the reference has a slanted bottom surface, as seen in Figures 2A-2C. The method of the reference may also include the step of exposing the microorganisms to reagents, including detergents, surfactants, and enzymes, contained and immobilized in distinct zones in a density gradient to dissolve contaminating particles (col. 6, lines 42-50). In addition, fluorescent particles of known density may be included in the sample to assist in identifying particles by density (Col. 13, line 65 – Col. 14, line 10).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 7-8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stocker (US Pat. 4,560,647).

The reference teaches a method of determining an analyte, as previously discussed. However, the reference does not teach the staining of particles or the segmenting of microorganisms.

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use the method of Stocker to segment microorganisms and stain the particles at some time during the analysis. Since viral antigens or antiviral antibodies could be determined with the method of the reference, one could have easily used the virus particle itself with a reasonable expectation of success. In addition, it would have been obvious to stain the particles

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before visualization, as this would allow for more efficient and accurate measurement of the amount of analyte presence.

***Conclusion***

Claims 1-10 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kartic Padmanabhan whose telephone number is 703-305-0509.

The examiner can normally be reached on M-F (8:30-5:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 703-305-3399. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-5207 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Kartic Padmanabhan  
Patent Examiner  
Art Unit 1641

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July 1, 2002

  
LONG V. LE  
SUPERVISORY PATENT EXAMINER  
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07/01/02